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June 23, 2003

Joseph Hogue
Field & External Affairs Division (7506C)
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460

Dear Mr. Hogue:

Thank you for the opportunity to offer the following comments on the document "Pesticides; Emergency Exemption Process Revisions Pilot and Request for Comment", Docket ID No. OPP-2002-0231. I ask that you consider these comments as you finalize plans for launching the pilot project and promulgate rules for improving the Section 18 exemption program.

I would also like to compliment the Agency on its administration of the Section 18 exemption program. The Section 18 Team processes over 500 Section 18 exemption requests annually with limited resources, and I commend the Team for its ability to respond to exemption requests in a timely manner. At the same time, I recognize the need to continually seek improvements to routine regulatory processes, and I compliment the Agency on this initiative, which seeks to streamline the Section 18 exemption process.

Eligibility Criteria

The proposed pilot program is limited to reduced risk pesticides under certain situations and thus will include fewer than 20 emergency uses. This sample set is probably too small to measure success and identify efficiency gains with the pilot program. As an alternative, I urge you to consider expanding the pilot to give the Agency the discretion of including a "re-certification" provision in a Section 18 exemption approval letter, regardless of whether the product is a reduced risk pesticide. Both the states and EPA have experience in dealing with conventional pesticides. Many of these products are not reduced-risk pesticides, but regulators have developed methods to adequately mitigate risk to humans and the environment. Expanding the pilot to include conventional pesticides would still give the Agency ultimate control over allowing the re-certification provision. However, this would increase the number of exemptions included in the pilot and create a larger sample set to solicit feedback.

Tiered Economic Impact

Data to support the "significant economic loss" of an emergency pest situation is often limited, especially for new and minor crops. Therefore, I fully support the proposal to create a tiered system to demonstrate that an emergency pest problem will likely cause a significant economic loss. This will reduce the data burden for certain exemption requests, and it will also allow applicants to respond more quickly to emergency pest outbreaks.

Resistance Management

Pesticide resistance has become a major problem for agricultural producers. Under the current system, Section 18 exemptions are only allowed in situations where resistance has already occurred and there are no alternative management tools available for the pest in question. However, in my opinion, this is a reactive approach to address situations where resistance has already occurred, and we should instead look at proactive strategies to delay or prevent the development of resistance. Therefore, I fully support modifying the current system to allow Section 18 exemptions for resistance management. This will also encourage the development of integrated pest management (IPM) approaches.

Expanding Section 18 exemptions to allow requests for pesticides to manage resistance will come with some challenges. If rules are promulgated to allow resistance management as a criterion for Section 18 exemption, I urge the Agency to specify those situations when resistance management can be used to request an emergency exemption. I also urge the Agency to solicit input from experts with experience in pesticide resistance to better define those situations when a Section 18 exemption would be needed. At a minimum: 1) the pesticide requested should have a different biochemical site of action than registered alternative(s), 2) only one mode or site of action is currently available with registered alternative(s), and 3) resistance to registered pesticides has been demonstrated to occur with similar pests, in other crops, or in some other model situation.

In summary, I fully support efforts to streamline the Section 18 exemption process and reduce Agency workload on repeat exemption requests. Please contact me with any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Johnson", written in a cursive style.

Roger Johnson
North Dakota Agriculture Commissioner

RJ:jag